City of Lafayette Staff Report

For:	City Council Planning Commission Design Review Commission
By:	Niroop K. Srivatsa
Date Written:	September 4, 2009
Meeting Date:	September 14, 2009
Subject:	**Town Center Phase III: Proposed residential condominium project**

❖ Background

This is the second joint meeting to provide preliminary comments on a proposal from KB Home, Inc. and Lafayette Residential Partners ("applicant") to construct an 82 unit residential condominium project on a 1.47 acre vacant parcel known as Phase III in the Town Center development. At first joint meeting held on May 26, 2009, the applicant received feedback on the proposed project and has revised the plans to respond to that feedback. Included in this packet are the following documents:

1. A Response to Comments table. In this table, the comments of the City Council, Planning Commission and Design Review Commission are grouped by issue (use, height, parking, etc.); the applicant's responses and staff comments are provided.

2. Staff report prepared for the May 26th joint meeting

3. Preliminary comments from City's traffic consultant and transportation planner (prepared for the May 24th meeting)

4. Minutes of the May 26th joint meeting

5. Revised plans prepared by the applicant for the September 14th meeting

6. Plans submitted for the May 26th meeting

❖ Importance of the Joint Meeting

This pre-application joint meeting is very important to both the applicant and the City. It is important to the City because the Settlement and Development Agreements require that the City Council, Planning Commission and Design Review Commission *"provide preliminary comments regarding the potential preliminary approval or disapproval of the Project"* and that *"future submittal requirements shall be limited to matters legally required for project consideration and directly responsive to comments from Council Members and Commissioners"* made at the joint meeting. It is important to the applicant because the comments made at this meeting will provide an indication of the City's support of the project (or lack thereof) and will determine whether or not to proceed with filing a formal application for development. Staff encourages the Councilmembers and Commissioners to be frank in their assessment of the project next Tuesday evening. If there are specific aspects of the project that you cannot support unless revised, please raise them at the meeting. If you have fundamental concerns that cannot be mitigated through

project revisions, please discuss them and explain why you have those concerns. Conversely, if you like the project, please explain your reasons for supporting it. The comments made at this meeting and the May 26th joint meeting will together constitute the City's feedback to the applicant.

❖ **September 2009 Revised Plans**

The following table furnished by the applicant provides data for the 2005, May 2009 and September 2009 plans.

Item	2005 Plan	May 2009 Plan	September 2009 Plan
Gross acres	63,822 SF	63,822 SF	63,822 SF
Net acres (without creek)	49,822 SF	49,822 SF	49,822 SF
Lot coverage	38,924 SF	34,879 SF	32,094 SF
Maximum height of building	70' to peak from datum +317	The height of the building measured from average grade to peak of roof is as follows: Southern elevation: 62 feet Eastern elevation: 57 feet for south leg of building and 67 feet for north leg of building Northern elevation: 64 feet Western elevation: 67 feet	The height of the building measured from average grade to peak of roof is as follows: Southern elevation: 62 feet Eastern elevation: 57 feet for south leg of building and 67 feet for north leg of building Northern elevation: 64 feet Western elevation: 67 feet
Number of stories	5	5	5
Total number of units	77	89	82
Number of studio units	0	5	0
Number of one-bedroom units	31 (5 live work units)	19	29
Number of two-bedroom units	32	44	30
Number of three-bedroom units	14 (2 Bdrm + Den)	21	23
Number of parking levels	3 (w restaurant)	2	2
Total number of parking spaces	216 (w restaurant)	162	143 (required spaces)
Total building area (including parking areas)	222,615 sqft.	193,001 sqft.	184,452 sqft.
Total building area (excluding parking areas)	117,407 sqft.	126,470 sqft.	121,240 sqft.
Area of landscaped courtyard	4668 sqft.	3914 sqft	3914 sqft

❖ **Staff Comments**

Staff supports the construction of a multi family residential project at this location. The site is adjacent to BART, within walking distance to stores, parks and services. It is, in staff's opinion, an ideal site for higher density housing. The buildings, while tall, are set against the backdrop of the BART station and the elevated freeway. Staff also supports

multifamily in this location because it provides affordable housing units and an improved pedestrian linkage to the BART station.

Regarding this particular application, staff sees considerable improvement in the treatment of the southern façade. The removal of repetitive elements such as the shallow balconies is welcomed and the addition of bay elements, window shades, and deeper roof overhangs will add interest and articulation to this façade. The alignment of the lobby with Dewing Avenue strengthens the project's connection with the main thoroughfare. The roof deck will provide an added amenity to the residents.

Since the building elevations have not been furnished, staff is unable to comment on the aesthetics of the eastern, northern and western facades. Staff will note that it is uncommon for the City to make important design decisions without such building elevations and, therefore, any final decisions about this project should be delayed until such elevations are completed and thoroughly reviewed. That said, the applicant has stated that the southern façade serves as a prototype to demonstrate a solution to break up repetitive elements in windows, porches, bays, etc. The applicant expects to work out the details of any repetitive elements in the remaining facades, just as in the south elevation, in the next step of the process. Again, however, staff underscores that the treatment of all facades must be resolved to the City's satisfaction in order for the project to gain approval. This includes the review of all detailed elevations, building materials, landscaping elements and lighting.

The project appears to provide all of the parking spaces called for in the settlement agreement. However, since floor plans have not been provided, staff can neither verify that this is true, nor can we comment on the parking layout and circulation plans. Parking (width, total number, handicapped spaces, etc.) and circulation (access to garage, aisles, etc.) must be approved by the City Engineer and traffic consultant during the application review process. Any reductions in the number of spaces as a result of this review could lead to a reduction in the number or type of units.

Staff supports the relocation of the northeastern leg of the building away from the BART pathway and the oak tree. The replacement of the spiral terraces and steps with a softer landscape palette of native trees and plantings along the BART pathway is also supported. However, the applicant has not addressed the City's comments regarding the use and treatment of the arcade/colonnade along the southern elevation and the adjacent plaza. With the relocation of the lobby east to align with Dewing Avenue, the arcade under the building will now be approximately 140 feet long and occupy nearly two-thirds the length of the building. Its intended uses are as (1) a venue for public art and (2) a covered pathway from BART to Mt. Diablo Blvd. This arcade and the plaza to the east are a replacement for the previously-approved restaurant with outdoor dining and five live/work spaces. To replace these uses, the settlement agreement calls "an acceptable open space or quasi public interior space" "that enlivens the southern edge of the development that meets City aesthetic requirements."

Staff does not believe that the proposed arcade and plaza meet this test. The arcade, even if embellished with art, will do little to attract people beyond BART users and the condo residents. The adjacent plaza provides no public amenity to enliven it. As drawn, there is nothing about this space that distinguishes it, and the plan does not in any way reflect the long held intent of the various Town Center agreements over the years to provide a public gathering space as relief from and a focal point between the two massive housing projects.

Staff asserts that the plans must be redrawn to provide amenities that will attract nearby residents and shoppers. If this project were approved and built, there will be over two hundred multifamily units within walking distance of this site. What is needed are features that will draw these residents, their children, and grandchildren, to the plaza on a hot summer's evening to enjoy the open space, the creek and the adjacent restaurants. Whether it is interactive art, a water feature, a sprayground, or a venue for music, this needs to become a public space that enlivens the project's southern edge and provides a public benefit. This has long been the vision of the BART block and the Town Center, and it shouldn't be abandoned now.

Staff recommends that the Council and Commissions provide direction to the applicant.

❖ **Recommendation**

Provide direction to KB Home and Lafayette Residential Partners.

Attachments

Issue	Council/Commission comments on May 26th	September 2009 revisions to May 2009 plans
Project/Use	(Cleaver) Feels the building is a little big as it sits on the site. (Marquand) Graphics the applicant provides in the future should show a larger context and the height of the building to those things around it, and felt claustrophobic in the way the project is being analyzed. He said he did not know much about the 2005 plan, but likes the idea of density near the BART Station; it is an excellent opportunity for density and he much prefers residential over commercial. However, he was a little deflated when he saw the 2005 plan simply because the current proposal is so much more generic than the 2005 plan. He said he appreciates this being proposed as a residential use. (Hertel) This is the correct position in Lafayette to do such a project of this mass and have the transit corridor as the core of the downtown, and the ship sailed on a better plan 20 years ago at another recession. He acknowledged the mixed use development and said he sees it best used as housing. He loves the project, the idea, and he really wants something that has significant mass and importance to be in this town, but feels it needs some work. (Mitchell) It is important to look at the relationship between what is presented in the BART Block Specific Plan because eventually the City will get an amendment out of this, so the City should look at the relationship to it. BART Block Specific Plan calls for a 3-story height limit. This is 5 stories--or depending upon how one reads the Municipal Code--6 stories high. Some 3-story buildings higher than 35 feet are allowed in the specific plan and this is 57 to 67 feet. Regarding Commissioner Hertel's comments and the number of units and density, it is a 1.47 acre parcel, so at 76 units, there are about 50 units per acre. The 2009 plan had 89 units which are about 60 units per acre. But, importantly, the area of the creek setback is the undevelopable area leaving about 1.09 acres which pushes the density up a lot to about 81 units per acre. The same applicant put forward a plan in 2004 for a 3- and 4-story building which was 75,317 square feet of living area. The 2005 plan goes from 75,000 to 111,000; the 2009 plan goes to 123,000. So, the proposals got bigger. The City is working on a downtown specific plan and he believes the City will get an amendment to the BART Block Specific Plan. It looks like this is going in the direction of 3 and 4 stories and is coincidentally what was proposed in the 2004	With the elimination of two 3-bedroom units and 5 studio units, the number of units in the project has been reduced from 89 to 82 The building area (excluding parking areas) has been reduced by approximately 5,000 sft. The northeast leg of the building has been moved farther from the oak tree and BART pathway. The two towers have been eliminated The building footprint area has been reduced by approximately 3,000 sft. *Staff Comments* *Staff supports the construction of a multi family residential project at this location. The site is adjacent to BART, within walking distance to stores, parks and services. It is, in staff's opinion, an ideal site for higher density housing. The deductive changes to the building area and building footprint are appreciated and supported.* *Staff also supports the project because it provides affordable housing units and strengthens the pedestrian connections to the BART station.*

Issue	Council/Commission comments on May 26th	September 2009 revisions to May 2009 plans
	submittal of 75,000 square feet. Mr. Bowie, in his conclusion, stated that they do have a viable project, an approved office building, and that building is 100% in compliance with the BART Block Specific Plan and has a useable area of less than 30,000 square feet of office with lower heights. In conclusion, he would go in the ""thumbs down"" direction because he does not see the relationship to the BART Block Specific Plan sufficiently close. (Maggio) Would like to see Phase III completed, she would like to see multi-family housing and thinks it would have a great opportunity at the BART station. (Chastain) Gives the project a ""thumbs up"" because it is multi-family development in the right place in town and he supports the use on the site. However, he will have to see things changed before he could approve it. (Lovitt) Working on something like this in today's environment takes some foresight. He echoed many comments, completely agrees with the concept and use of the building, does not agree with the height and mass, thought the plan of the past was better and this one presses harder than that and in the end, he would not be able to give it a ""thumbs up"." (Anderson) Supported housing at the location. He likes the general concept, felt it could be carved and brought down a bit, but he was not so worried about that. (Federighi) Likes the site for housing and thinks it is the appropriate spot for a dense project. (Anduri) Agrees that this is definitely a place for housing, agrees with the density, and said his concerns relate to the connections to surroundings. He agrees completely with Commissioner Hertel that it crowds the surroundings on just about every side of the building. (Tatzin) Thinks housing is the preferred use for the site, stating this is probably the lot along with Town Center II where it is appropriate to have the highest density Lafayette will have and he hoped to proceed to the next step.	

Issue	Council/Commission comments on May 26th	September 2009 revisions to May 2009 plans
Height/mass/view-sheds	(Cleaver) The development currently suffers from the fact that all of the structure pushes to the edges and needs to be planned a little bit better for there actually being a significant open space where a couple of big trees can come in, where the actual void in the building can be absorbed by planting. This contrast will make a better overall building mass. (Marquand) He was more concerned with the project's monolithic massing which comes through in community comments, believes other commissioners have elaborated well about the care and detailing, as well as the idea that the building has a face, a middle section and a top, and a lot is being asked to go up to this number of stories. He would like to see the best building that Heller Manus has done on this spot because he believes it is a big concession on the City's part. He thinks four stories would seem a lot nicer or possibly play with a mix of four and five stories in different ways. (Hertel) His difficulty overall is that he believes the project strains at the edges. Re-calculation can be done on a net basis, but it strains at the edge of the parking, at the creek edge, and at the north edge of the BART parking lot. Ironically, the area where the building steps back is the west edge where no one even enjoys it or acknowledges that sort of cutback. It is a great benefit to the residents who enjoy the terrace which can only be planted with trees that can survive in a small planter sitting on top of the terrace and not in dirt. The plan needs deductive changes in order to make it successful architecturally and it needs bigger movements in the building massing. Regarding ConnexTech, the reason it is being used is because one cannot push up five stories of wood frame by the Building Code. He said with the building next door, they had a schematic plan, it went to design development, things got added to the building that did not get deducted, and it stressed even more at the side. (Ateljevich) Appreciates the fact that the applicant said they would step back the back part of the building that is near the oak tree, but feels that overall the height and bulk of the building are too big for Lafayette, and she did not believe 5 stories was needed.	The height of the buildings remain the same as the May 2009 plans The number of stories (5) remains the same As with the previous (Option 10A), the fifth floor in the northeast leg of the building is stepped back from the BART pathway *Staff Comments* *The buildings, while tall, are set against the backdrop of the BART station and the elevated freeway. Views of the hills are currently filtered by existing trees adjacent to the BART station. The building will block the majority of views of the hills when viewed from the southern entrance to the BART station. However, this would also be the case if the approved three story office building were built. Very limited views of the hills will be seen from the BART pathway.*

Issue	Council/Commission comments on May 26th	September 2009 revisions to May 2009 plans
	(Chastain) He believes the project is too high in terms of the way the rest of the building is handled. There might be a 5th story if it were set back or if the building itself had more articulation. So, it is not just the height but the fact that it is a nominal understanding of a building. He was asking questions about the structural system because he thinks the applicant can get bigger shifts in the wall plane possibly generating better daylight but also being able to break up the plan. (Federighi) She hears real concerns about the height and while she would prefer it lower, she thinks the visual impact of Town Center II has not been height-wise that significant. (Anduri) Regarding view sheds, when one is behind the retail building, even now one cannot see the hills in any direction. He did not know what the situation was when down on Mt. Diablo Boulevard at the intersection, but it could be that the three-story building blocks that out. (Tatzin) He looked at the area from the Diablo Foods parking lot and one might have been able to see the tower only because it was the only section of the site that wasn't hidden by the trees that are between you and the site. He appreciates the applicant looking at the visibility comparison of this versus the 2005 plan from the perspective from Mt. Diablo Boulevard and he also encouraged the applicant to determine what that would look like if walking down the BART path toward Mt. Diablo, and how apparent the sense of two buildings was.	
Southern elevation	(Lee) Disappointed that the lobby does not "plug" into the street by the driveway, which he felt was a missed opportunity. He thinks some thought and consideration should be given with these two pieces because he felt they did not align. (Hertel) Regarding the south elevation, he finds himself still agonizing over the lack of connection. He wants to go back to the whole concept of the BART Block mixed use, and this is the last opportunity to mix the uses. He knows retail is not viable, live/work is not viable, nothing is economically viable except a dead arcade that is shallow, goes nowhere, starts nowhere and forces people under a 5-story building which seems oppressive in its height and weight, and he questioned why he would want to go underneath it. He was not horribly pleased with the solution; he	The latest submittal includes a rendering of the southern façade showing the following changes: 1. The two story lobby has been moved west to align with Dewing Avenue 2. The roof of the lobby will serve as an outdoor landscaped usable area 3. The elevators and elevator wells have been relocated allowing for a deeper set back above

Issue	Council/Commission comments on May 26th	September 2009 revisions to May 2009 plans
	understands the solution architecturally—it is being pushed right to the edge. He is worried about the depth of articulation of the building façade; the south elevation has a two foot shift and Juliet balconies, so there is not tremendous shadow line, animation, and also, repetitive demonstration. This worries him about this footprint moving forward. Also saw the entry way as an opportunity for doing a roof deck and he worried that the interior of the C-shaped courtyard will never see the light of day except at high noon. So, this may perhaps given a common area to the residents. (Ateljevich) South elevation is quite boring. (Chastain) Thinks the C-shaped plan is fine and appropriate, but more transparency at the entry would help with the understanding of the different parts of the building. The entry is built up out of stone as opposed to emphasizing the transparency, which he feels would mitigate the sense of the building being contained. He agreed with comments about the south elevation in terms of articulation and he would be more interested in a more careful understanding of what the top is versus what the bottom is. However, the whole bottom edge has presented itself as a series of after thoughts, which is not sufficient for his approval. The towers are totally without value to him and did not believe the town needed competing towers, as they actually call attention to the height and get in the way of the cascading roofs. He would like trees to be the definition and he thinks the towers do not serve a purpose that has been identified as making something special, and he believes they just make the height more apparent. He would also expect the towers to be removed to allow the building to have a gentler end and just allow that movement into the landscaping space. (Anderson) Voiced concern about how this faces the back ends of all the restaurants. There are dumpsters and other things on the back sides of restaurants which would be front yards for the area across the street, and he was not sure how those would relate to each other. (Anduri) Agrees with Commissioner Lee that it would be a real opportunity to do something that lines up with Dewing to tie it altogether. In terms of what that is on the south façade, he did not know. He was also agnostic on the towers. He can see not having the towers might be better if somehow that side sloped down to the	the main entry (See Alternative 11, P1 Level Plan) 4. The utility rooms that were previously located between the garage entry and the lobby have been moved (See Alternative 11, P1 Level Plan) 5. The sidewalk north of the retail parking lot has been removed and replaced with a landscape buffer between the cars and the building (see Landscape Plan) 6. The arcade under the building will now extend from the eastern edge of the building to the lobby (see Landscape Plan) 7. Bay elements have been added to the fourth and fifth floors. 8. All gable ends are now hipped with deep shadow lines 9. Window shades have been added to some of the windows in the upper stories 10. The tower at the east end of the southern façade has been eliminated *Staff Comments* *Staff sees considerable improvement in the treatment of the southern façade. The removal of repetitive elements such as the shallow balconies is welcomed and the addition of bay elements,*

Issue	Council/Commission comments on May 26th	September 2009 revisions to May 2009 plans
	creek, which would be important. He thinks the tower on the east is fine and a good element, acknowledged that if there are too many towers it gets trite, and emphasized the open point. Taking away a tower would create more of an open space.	*window shades, and deeper roof overhangs will add interest and articulation to this façade. The alignment of the lobby with Dewing Avenue strengthens the project's connection with the main thoroughfare. The removal of the tower could provide greater area for public use and enjoyment. Since floor plans and some elevations have not been provided, it is difficult to understand how the building turns the corner towards the BART pathway at the southeastern edge. This is an important public corner and must be treated carefully.*
Eastern elevation	(Lee) The building itself has some issues and he could guarantee that people in town know the difference between a building that looks like its two buildings with an opening and one that does not; however, he did not believe this was too important. The bigger aspect is the experience along the creek which needs the relief so one is not walking down the Grand Canyon or the "fort" of Lafayette. (Ateljevich) Appreciates applicant's willingness to set back the building from the oak tree. (Anduri) On the east façade he has trouble with the hardscape; it makes the building seem much closer and takes away from the path. One of the Commissioners said that should be heavily planted and this needs a softer edge and it is too close to the path. He believes it will be very important to pull back the northeast corner from the oak tree.	Revised northern and eastern elevations will be presented at the joint meeting. The applicant has used the southern façade to demonstrate a solution to break up repetitive elements in windows, porches, bays, etc. and expects to work out the details of any repetitive elements in the remaining facades, just as in the south elevation, in the next step of the process The Open Space and Circulation plan shows that the northeast leg of the building has been moved farther away from the oak tree and BART pathway, creating additional area for landscaping *Staff Comments* *Since floor plans and some elevations have not been provided, staff cannot comment on the eastern elevation. However, staff supports the movement of the northeastern leg of the building away from the BART pathway and the oak tree. The removal of the towers could provide additional open areas for public use and enjoyment.*

Issue	Council/Commission comments on May 26th	September 2009 revisions to May 2009 plans
Western elevation	(Hertel) West elevation – is not sure that significant landscaping can be achieved given the limited space (10' wide strip for trees). (Chastain) The west elevation is pretty difficult and he would withhold his own judgment until he studies better what the view is from the town. As it stands, it is the largest sea or wall of the project and it is problematic.	The 4th Level plan indicates that additions to the western side of the building will be made to mitigate the lack of building articulation. *Staff Comments* *Since floor plans and some elevations have not been provided, staff cannot comment on the revisions.*
Northern elevation	(Cleaver) The current buildings look extremely flat right now and the roofs look extremely flat on the west and north. The south elevation has some articulation, and he would like this to occur in other spots.	Revised northern and eastern elevations will be presented at the joint meeting. The applicant has used the southern façade to demonstrate a solution to break up repetitive elements in windows, porches, bays, etc. and expects to work out the details of any repetitive elements in the remaining facades, just as in the south elevation, in the next step of the process *Staff Comments* *Since floor plans and some elevations have not been provided, staff cannot comment on the revisions.*
Quasi public space	(Lee) The art gallery seems like a left over piece where you cannot park cars in it. It does not have an opening; he is afraid it will never get used and is not a good place to put art especially given its access to weather conditions. (Cleaver) He agreed that the gallery does not make much sense and part of him wants to get rid of the balconies on the south side and slide the entire building closer to the property line, allowing for more space somewhere else. (Marquand) Regarding the much discussed art gallery, he feels the space is nice. In terms of getting relief from the wall coming down, people will be used to a more spacious drive-a-way along the Mt. Diablo commercial area and he thinks that the big shadow line would be helpful in how it is worked out.	The arcade/colonnade has been redesigned to be the main pedestrian route from the BART pathway to Dewing Avenue. As they travel south from the BART station, pedestrians will have the choice of either crossing the retail parking lot at the Lafayette Circle extension or heading west under the protection of the colonnade to the Dewing Avenue extension. Wayfinding signage will be posted to lead the pedestrian to the right destination. The applicant intends to work with the City's Arts Committee to enliven the arcade/colonnade with art. An example cited would be to tell the story of

Issue	Council/Commission comments on May 26th	September 2009 revisions to May 2009 plans
	(Hertel) His biggest concern is how the public area fits under the building. He sees a sheer wall blocking and killing two sides of it and he is worried about how this would play out. (Chastain) This is the public contribution that the building makes to the south edge and he was much more interested in how it relates to the buildings around it and to the uses around it. Also, if the space is truly a community art gallery, he would like to see how this would work; how it would be programmed and maintained. If it were truly a gallery, he might begin to think it is a significant contribution at that edge of an activity, of a public use when people cross the street, but it is not really presented this way and therefore hard to understand how it would actually work. If the space is taken away and made into landscaping, it is a tucking under the building and he did not see how a use could be made there. It could be highly articulated as a place to sit in the sun, drink coffee, or something but now it is not presented that way and until the space is not presented as an afterthought but a true attribute to the public environment, he would not approve it. (Anderson) He saw the plan when there was an enclosed gallery and he could understand it better. As an arcade like this; however, he felt it was lost in the shadow and he suggested that with the tower removed; this could be a large, open, unfettered, no column space that flows from the outside in. He felt the public space was something the City had labored with for a long time and while they were getting close, the project is not there yet. (Federighi) Shares Councilmember Anderson's feelings about the gallery. When seen, it was enclosed but required extra parking. To solve the parking problem, by keeping it open it leaves it as an after thought. To be useful, it should be opened up more and exactly how that is done she would leave for others to resolve.	the oak tree through sculptures and mosaics. *Staff Comments* *With the relocation of the lobby east to align with Dewing Avenue, the arcade under the building will now be approximately 140 feet long and will occupy nearly two-thirds the length of the building. Its intended uses are as (1) a venue for public art and (2) a covered pathway from BART to Mt. Diablo Blvd. This arcade and the plaza to the east are a replacement for the previously-approved restaurant with outdoor dining and five live/work spaces. To replace these uses, the settlement agreement calls "an acceptable open space or quasi public interior space" "that enlivens the southern edge of the development that meets City aesthetic requirements."* *Staff does not believe that the proposed arcade and plaza meet this test. The arcade, even if embellished with art, will do little to attract people beyond BART users and the condo residents. The adjacent plaza provides no amenity to enliven it. If these spaces are to be truly public in nature, they need to provide the amenities that would attract nearby residents and shoppers. If this project were approved and built, there will be over two hundred multifamily units within walking distance of this site. What is needed are features that will draw these residents and their children to the plaza on a hot summer's evening to enjoy the open space, the creek and the adjacent restaurants. Whether it is interactive art, a water feature or a venue for music, this needs to become a true public space*

Issue	Council/Commission comments on May 26th	September 2009 revisions to May 2009 plans
		that enlivens the project's southern edge and provides a public benefit.
Green building	(Lee) Likes the idea that the developer is talking about a green project, hoped that it could be up to 80 points, and the fact that transit villages make huge concessions on the parking side, then there should be some zip cars that are shared amongst people or other alternatives available. (Maggio) She believes the market will come back in a few years and with that in mind, she challenged the applicant to do something significantly greener. She felt the metal structure was a good engineering decision, the energy star appliances are good for the consumer, but neither is really building green. There are lots of things one can do without expending any more money to make the environment much friendlier to habitants inside. She said simple things like creating more daylight getting into the interior of the apartments will reduce gas and electricity, and could downsize the HVAC system and saving money.	No details have been provided.
Landscaping/plaza treatment	(Lee) He said he was looking for softness in the courtyard; when getting to the opening of the C, there is a harsh edge right not where the podium ends. He said they said the same thing about the Woodbury project, such that it does not look like we are not burying the structure underneath. The stairs might need to be flared or loosened up a bit so they behave in a way that is organic to the space to the east. (Cleaver) The trees northeast and northwest of it need to be accommodated better. He thinks the plan graphics of the spiraling jetty in the open space is nice, but he would rather have significant planting and not a series of walls. (Anderson) He said he really likes the public garden, the public/private piece and the center of the "C" but questioned how people would get to the street from BART which he believed was missing and needs work.	The terraces and steps have been replaced by a gently sloped area planted with trees and native vegetation. *Staff Comments* *Staff supports the introduction of native trees and plantings along the northern and central areas adjacent to the BART pathway. For comments on the arcade and plaza, see the section on the quasi-public space.*
Façade treatment	(Lee) Regarding the issue about how the building finishes, he felt the entire process was organizing itself around a building that was designed without having played the right games with the weights of the elements and pieces as you form the base of this building. There is still a sliding glass door stacked under a stack of 6x8 doors and the group cannot get the sense that a base is a base, and he was not sure the top was really a top. They have made some material changes and as rich	See comments on the southern elevation.

Issue	Council/Commission comments on May 26th	September 2009 revisions to May 2009 plans
	as they look on a 3x4 board it is not the same when there is 120,000 square feet of building and there is the need to break down its mass. From a design review perspective, he will be looking for somebody to show him more richness in detail and in a way that makes the building look better. He voiced concern about the art gallery and lack of change of penetration as you hit the tower and said the tower just looks like another part of the building. He wants to see something stronger such as changing the railing from a light railing to an opaque railing, or make smaller openings in railings, or changing the sizes of railings in the rise to the tower. He said those he has seen in architecture books are those which should occur. He likes the fact that they have bracketed the creek with some elements that will be fairly innocuous later on. The area between Baja Fresh and AT&T store and never see a tower up 60-70 feet up into the air and what is important is what happens at the base. Commissioner Lee referred to the top and the progression from the stone to the rusticated finishes to a smoother finish will be a mistake. The top needs more weight and right now it is very light and what is needed is something heavier and sticks to the ground better. (Maggio) Questioned how this development for Lafayette would be different from Milpitas and San Jose, and did not receive an answer, and she challenged the applicants to make it different from those communities. This relates to what Commission Lee had said about the appropriateness of building materials, and she felt Design Review could assist with this.	
Parking	(Lee) Less inclined to pressure parking counts because the idea is to change our way of thinking about how people get around and not get into a car and possibly making Mt. Diablo more pedestrian-friendly, as well. (Anduri) Guest parking needs to be addressed.	The applicant states that the project will have one parking space per bedroom not to exceed two parking spaces per unit. *Staff Comments* *The standard listed above is a requirement of the settlement agreement.* *Since floor plans have not been provided, staff cannot comment on the parking layout and circulation plans. Parking (width, total number, handicapped spaces, etc.) and circulation (access*

Issue	Council/Commission comments on May 26th	September 2009 revisions to May 2009 plans
		to garage, aisles, etc.) must be approved by the City Engineer and traffic consultant. Any reductions in the number of spaces as a result of this review could lead to a reduction in the number or type of units.

City of Lafayette Staff Report

For:	City Council Planning Commission Design Review Commission
By:	Niroop K. Srivatsa
Date Written:	May 18, 2009
Meeting Date:	May 26, 2009
Subject:	**Town Center Phase III: Proposed residential condominium project**

❖ Purpose

To consider and provide preliminary comments on a proposal from KB Home, Inc. and Lafayette Residential Partners to construct an 89 unit residential condominium project on a 1.47 acre vacant parcel known as Phase III in the Town Center development. This joint meeting is called for in the Settlement Agreement ("SA") that was approved in February 2008. Based on the comments made at this meeting, the applicant will decide whether or not to proceed with filing a formal development application.

❖ Town Center Phase III History

In 1998, the Lafayette City Council entered into a development agreement ("DA") with Lafayette Town Center Associates to redevelop a 4.84-acre property in the downtown core. As part of the agreement, the Council rezoned the property to P1 (planned development) and approved a mixed use development consisting of three phases – commercial, multi family residential and office. Phases I and II were built and occupied shortly thereafter. The third and final phase, approved for a 26,000 square foot office building, is as yet undeveloped.

In 2003, the applicant, now called Lafayette Residential Partners, LLC, ("LRP") submitted an application for a 73-unit apartment project in place of the approved office building in Phase III. While the City indicated that it supported the change in use from office to multi-family residential, the proposed application was considered by the Planning Commission and found to be inconsistent with the BART Block Specific Plan. That application was withdrawn.

In 2005, the property owner entered into a contract to sell Phase III to KB Home South Bay, Inc. ("KB"). KB Home's proposal contained 76-unit luxury condominium units, five live/work units, a 3,000 square-foot restaurant and at least two levels of underground parking. Schematics of this proposal designed by the architectural firm Heller Manus were presented to the City Council, Planning Commission and Design Review Commission at a joint meeting in 2005. However, in early 2006, KB Home terminated its contract to purchase the property.

In May 2006, the applicant and the City entered into a Settlement Agreement to resolve a dispute related to the Development Agreement, which required the City to amend the Development Agreement to include a luxury condominium component with affordable housing as further defined in the Settlement Agreement. The Settlement Agreement referenced the 2005 Heller Manus plans which, as previously stated, contained a restaurant and live/work units.

In January 2007, the City engaged the services of Libby Seifel, a certified planner with experience in real estate economics and urban development to assist the City and property owners in understanding the trade offs between an office project and a residential project. Ms Seifel stated that if the parties wanted a residential use on the subject site, the standards and criteria set forth in the Settlement Agreement, particularly the requirements for a restaurant and resultant parking, made such a use cost prohibitive. She recommended that the parties work together to come up with a way to make a residential project a reality. Based on the consultant's analysis, the City Council directed then Mayor Anderson and Councilmember Federighi to meet with Rick Dishnica and Ivan Glover, owners of Phase III to explore ways to achieve a residential option for Phase III.

In February 2008, after several months of negotiations, the Council subcommittee submitted amendments to the Settlement Agreement for the City Council's consideration and approval. The document was approved by the City Council on February 25, 2008 and contains details of the residential project alternative such as the design, uses, affordable housing requirements, fees and the application review process. These terms of the amended Settlement Agreement were also encapsulated in the Fourth Amendment to the Development Agreement which was approved by the City Council in April 2008.

On a separate but related matter, in March 2007, the applicant (LRP) received approval of the final development plans for the office building from the Planning Commission. An application for a building permit to construct the office building was filed and approved subject to payment of City fees.

In March 2009, representatives of LRP and KB met with staff to submit plans for an 89 unit residential condominium project. Staff reviewed the plans against the terms of the SA and found that they were inconsistent in terms of parking, massing and setbacks. KB provided alternatives to the plans to address some of staff's concerns and they are attached to the 2009 plan set. In accordance with the terms of the Settlement Agreement, a joint meeting of the City Council, Planning Commission and Design Review Commission was scheduled for May 26th.

❖ The Settlement and Development Agreements

Before providing you with a description and an analysis of the proposed project, staff presents the following highlights of the DA and SA. Understanding the terms in these two documents is important as they set the parameters for review of the project. Copies of the two documents are attached.

❖ *Fourth Amendment to the Development Agreement*

1. Term and purpose of the Development Agreement

The fourth amendment to the DA extends the term of the agreement to May 2010. The Development Agreement freezes the City's rules and regulations as of the effective date of its approval which is April 27, 1998. This means that the project is governed by the previous General Plan which did not establish a height limit for development in the Downtown. The project is, however, governed by the BART Block Specific Plan which establishes a three story maximum limit.

2. Land Use

The Agreement allows for a residential alternative to the office use approved for Phase III. The attributes of a residential alternative are described in this report.

3. BART Block Specific Plan

The Developer is required to file an application for amendment of the BART Block Specific Plan if potential preliminary approval is indicated at the joint meeting of the City Council, Planning Commission and Design Review Commission. The amendment to the Specific Plan shall be with respect to permissible building height.

4. Attributes of a Residential Project

a. Uses, site plan and elevations: The Developer is to retain Heller Manus Architects to produce conceptual plans for the residential project which will retain the general footprint, general elevations, general site plan and general plaza dimensions of the earlier proposal. (Recall that Heller Manus prepared the conceptual studies of the Phase III project site for KB Home in 2005.) However, the City has agreed to the following changes to the 2005 Heller Manus plans:

1. The requirement for a restaurant is removed provided that an acceptable open space or quasi public interior space substitute is proposed. The Developer shall apply for a Land Use Permit to define the specific acceptable open space substitute or public or quasi public interior space substitute for the prior required restaurant use.

2. There is no longer a requirement for live/work units, provided that an acceptable alternative is proposed that enlivens the southern edge of the development that meets City aesthetic requirements.

3. The Developer may provide a feasible design for a naturally ventilated parking garage that meets City aesthetic requirements and that responds to the need to enliven the southern edge of the development. However, nothing shall prevent the Developer from constructing an underground garage which is called for in the Heller Manus plans.

b. Height: In no case shall the height of the buildings exceed the height of the existing Residential and Retail Components. (For purposes of this paragraph, the height limitation imposed by the existing Phase II project shall be determined by project height above sea level rather than existing grade.)

c. Parking: Parking requirements shall not exceed two spaces per unit and shall be otherwise limited to one space per bedroom. Parking requirements may be satisfied by tandem spaces and/or "lifts".

d. Exterior finishes: Exterior finishes and materials used on the buildings, the plaza, and the pedestrian pathway and the proposed landscaping shall be of the highest quality, shall respect and reflect the creek side setting of the project, and be commensurate with the single family and environmentally-sensitive quality of residential buildings in the City. The City will require the extensive use of architectural features involving a variety of building materials including stone, brick, minimal use of smooth trowelled stucco, and wood for the exterior of the buildings. Other materials and finishes that are consistent with a high quality residential project may be offered by Developer as alternatives. Approval of such materials is at the discretion of the City.

5. Fees

The Developer will pay the following specific fees:

a. A public art fee consistent with the City's public art ordinance.

b. A contribution of $100,000 for off-site improvements earmarked for the BART pathway/project intersection.

c. A contribution of $50,000 for a traffic signal at the intersection of Dewing and Mt. Diablo Blvd.

The City may consider fees or exactions in addition to those that are designed to mitigate an environmental impact, as determined by the CEQA process.

6. Affordable Housing

The Developer will be required to provide affordable units equal to 15% of the total number of units. The City will provide credit for the excess very low-income housing units already in place at the Town Center apartments, if the affordable housing is provided on site. If the units are provided off site, no credit will be given and the Developer will comply with the Redevelopment Agency's affordable housing requirements.

- ***2008 Settlement Agreement***

The terms listed above are also found in the Settlement Agreement. In addition, the SA contains the following terms:

1. What the revised Heller Manus plans must accomplish:

The SA states that the Heller-Manus revised work product prepared for the LRP residential project alternative shall:

1. Retain the general footprint, general elevations, general site plan and general plaza dimensions of the earlier proposal;

2. Create a housing development that is economically viable from the standpoint of LRP; and

3. Provide a feasible design for a naturally ventilated parking garage that meets City aesthetic requirements and that responds to the requirement to enliven the southern edge of the development all with access to or from Dewing/Mt. Diablo Blvd. Nothing herein contained shall be deemed to prohibit LRP from substituting an underground parking garage structure in the place and instead of a proposed naturally ventilated parking garage as described herein above.

3. The Review Process

The Settlement Agreement stipulates a process for the review of a residential project on this site. It calls for an initial joint meeting of the Council, Planning Commission and Design Review Commission wherein LRP will receive preliminary comments regarding the potential preliminary approval or disapproval of the project. Based on the feedback received, LRP may file an application with the City and the application will be reviewed by the Design Review and Planning Commissions before final action is taken by the City Council. The agreement establishes deadlines by which each of these bodies must act on the application. The following language is from the Settlement Agreement on the review process:

> As soon as such Heller-Manus plans are available and have been delivered to Lafayette, a joint meeting of the City Council, Planning Commission, and Design Review Commission shall be scheduled. The said joint meeting shall occur within 30 days of delivery of all plans and submittals required by the City. The plans shall be schematic and may include cut sheets to provide information regarding architectural details. The plans shall include elevations, site plan, a conceptual landscape plan, parking and circulation, proposed lighting, paving, furniture, art, colors and a materials board related to the building. At its joint workshop meeting, Lafayette shall make preliminary comments regarding the potential preliminary approval or disapproval of the Project utilizing such procedures for recording comments of each body. (Project Preliminary Comments).
>
> If the Project Preliminary Comments indicate potential approval of the project, then Lafayette staff will produce submittal requirements for consideration by the Design Review Commission (DRC), Planning Commission and City Council. Submittal requirement shall include all CEQA compliance requirements; provided, however, the

prior EIR Studies and Addenda shall be considered (including those related to an earlier proposed apartment project for the Phase III Site). Otherwise, submittal requirements shall be limited to matters legally required for project consideration and directly responsive to comments from Council Members and Commissioners.

Within 30 days of the date on which the LRP Application shall be deemed to have been complete and the appropriate CEQA analysis shall have been completed, the DRC shall consider the plans from the joint meeting and Project submittal requirement at a hearing. The scope of DRC review shall be to recommend approval, conditional approval, or rejection of the plans and submittals furnished by LRP. The DRC action shall be completed within 45 days of the first DRC meeting on the Project unless LRP fails to provide any information or anything else necessary to act on the Application, including anything necessary for CEQA compliance.

The DRC's recommendation shall be forwarded to the Planning Commission as soon as possible, but no later than 30 days following DRC action. The Planning Commission shall take action on the LRP Application within 45 days of the first Planning Commission meeting on the Project, unless LRP fails to provide any information or anything else necessary to act on the application, including anything necessary for CEQA compliance.

The Planning Commission's recommendation shall be forwarded to the City Council as soon as possible. The City Council's action must be completed within 45 days of the first City Council meeting on the Project unless LRP fails to provide any information or anything else necessary to act on the application, including anything necessary for CEQA compliance. Such review shall include a CEQA determination and action on the Tentative Subdivision Map.

4. What Preliminary Project Approval means:

The agreement states that potential preliminary approval may include the following aspects/attributes of a residential project alternative: Site plan including public spaces, uses, parking structure/solution, height, mass, and number of units.

❖ **2009 Project Description**

KB Home's 2009 plan set contains the initial submittal on pages titled "Option 10" and revised sheets titled "Option 10A" which were prepared after staff's initial assessment of the project. Option 10 contains 89 studio, 1-, 2- and 3-bedroom units. Option 10 A contains 87 units. The building is C-shaped and overlooks a landscaped courtyard that is adjacent to the BART pathway. Parking is provided in two levels – podium and basement. The building varies in height from four to five stories. The primary access to the garage will be from Dewing Avenue and the entrance to the garage is located behind the Pet Food Express store. A two story entrance lobby anchors the southern façade.

The height of the building measured from average grade to peak of roof is as follows:

- ❖ Southern elevation: 62 feet
- ❖ Eastern elevation: 57 feet for south leg of building and 67 feet for north leg of building
- ❖ Northern elevation: 64 feet
- ❖ Western elevation: 67 feet

The landscaped courtyard is divided into private and public areas. The public "amphitheatre" is accessed from the BART pathway. The plans also show an approximately 2,500 SF community plaza/sculpture park at the south east corner of the site and a covered arcade connecting the lobby to this space

❖ Analysis of 2009 Project Plans

1. Consistency with Settlement Agreement

In the attached table, staff compares the 2009 plans with the 2005 Heller Manus plans. As stated earlier, KB Home has provided revisions to its original submission to address some of staff's concerns. The revisions are (1) satisfying the SA's parking requirement, (2) stepping back the fifth floor in the north leg of the building away from the BART pathway, (3) cladding the majority of the buildings with siding in place of stucco and (4) replacing the community meeting room with an outdoor plaza and sculpture area. Staff appreciates KB's efforts to address our concerns about the project's consistency with the Settlement Agreement. However, as the attached table and marked up plans indicate, we cannot as yet find the project to be consistent with the 2005 Heller Manus plans. The items in bold in the table highlight the elements of the 2009 plan that we find to be inconsistent with the 2005 plans that are contained in the Settlement Agreement.

2. BART Block Specific Plan

As stated earlier, the Developer will be required to file an application for amendment of the BART Block Specific Plan if potential preliminary approval is indicated at the joint meeting. The amendment of the Specific Plan shall be with respect to permissible building height. A copy of the Specific Plan is attached.

The BART Block Specific Plan contains the following language relating to building height. Staff comments are added in parenthesis at the end of each paragraph.

> The presentation of building height and the architectural treatment of buildings within the retail core area along the edge of Mt. Diablo Blvd. should be of small scale village character. Buildings near the street side walk and for a reasonable distance into the block should be limited to two stories so that the prevailing view from the street is of two story facades and roof areas. This specific plan includes the Building Height Relationship diagram attached and labeled Exhibit B. *(Does not apply. Site is located behind the retail center which fronts Mt. Diablo Blvd.)*
>
> Variations in height are desired, monotonous sameness of height is not acceptable. *(The building varies in height, with the upper floor being stepped back away from the BART pathway.)*
>
> Visibility of the ridgeline and hills south of the downtown should be maintained as viewed from Highway 24. View of the ridgeline and hills should be retained from the southern entrance to the BART station and along the creek pedestrian corridor. *(Views of the hills are currently filtered by existing trees adjacent to the BART station. The building will block the majority of views of the hills when viewed from the southern entrance to the BART station. This would also be the case if the approved three story office building were built. Very limited views of the hills will be seen from the BART pathway. Applicant will have to seek an amendment to this section)*
>
> A pedestrian ambiance of openness, both vertically and horizontally, should be preserved along the creek pedestrian corridor. Low buildings with gracious and varied setbacks including further recessed upper floors could provide opportunities for dining or other casual and informal activities. *(The C shaped form of the building creates a large landscaped courtyard in the middle of the site adjacent to the BART pathway and provides a sense of openness to the pedestrian using the pathway. The upper floor of the building is set back from the BART pathway. Buildings adjacent to the pathway are not "low" but four stories tall. Applicant will have to seek an amendment to this section.)*
>
> Remainder of the block; subject to view, solar access requirements and the desire for height variations. The 3 story height limit will apply. Some 3 story buildings, higher than 35 feet, of small bulk may be approved in areas where the sense of height is not present or the background or topographic circumstances mitigate the sense of height. Greater

height shall be considered a privilege and should be compensated for by provision of greater open space and provision for pedestrian oriented amenities. *(The building is four and five stories tall. Applicant will have to seek an amendment to this section.)*

❖ Importance of the Joint Meeting

This pre-application joint meeting is very important to both the applicant and the City. It is important to the City because the Settlement and Development Agreements require that the City Council, Planning Commission and Design Review Commission *"provide preliminary comments regarding the potential preliminary approval or disapproval of the Project"* and that *"future submittal requirements shall be limited to matters legally required for project consideration and directly responsive to comments from Council Members and Commissioners"* made at the joint meeting. It is important to the applicant because the comments made at this meeting will provide an indication of the City's support of the project (or lack thereof) and will determine whether or not to proceed with filing a formal application for development. Staff encourages the Councilmembers and Commissioners to be frank in their assessment of the project next Tuesday evening. If there are specific aspects of the project that you cannot support unless revised, please raise them at the meeting. If you have fundamental concerns that cannot be mitigated through project revisions, please discuss them and explain why you have those concerns. Conversely, if you like the project, please explain your reasons for supporting it.

❖ Staff Comments

Staff supports the construction of a multi family residential project at this location. The site is adjacent to BART, within walking distance to stores, parks and services. It is, in staff's opinion, an ideal site for higher density housing. The buildings, while tall, are set against the backdrop of the BART station and the elevated freeway. Staff also supports the project because it provides affordable housing units, public open space, and an improved pedestrian linkage to the BART station. However, as the attached table and marked up plans indicate, we cannot as yet find the project to be consistent with the Settlement Agreement. This is a project of significant size and scale and more changes are needed to reduce its visual impacts, ensure safe circulation and improve its exterior aesthetic. Therefore staff cannot recommend approval at this time.

❖ Recommendation

Provide direction to KB Home and Lafayette Residential Partners.

Attachments

1. Correspondence from KB Home, Inc.
2. Staff analysis (table and plans)
3. Preliminary comments from City's traffic consultant and transportation planner
4. Fourth Amendment to the Development Agreement
5. Amended and Restated Settlement Agreement
6. BART Block Specific Plan
7. 2009 plan set

8. 2005 plan set

City of Lafayette Memorandum

To:	Niroop Srivatsa, Planning and Building Services Manager
From:	Tony Coe, Engineering Services Manager
CC:	Leah C. Greenblat, Transportation Planner Chuck DeLeuw, Consulting Traffic Engineer
Date:	May 6, 2009
Subject:	Town Center Phase III Preliminary Review

As requested I have reviewed, with my staff and consultant, the application referral for the proposed Town Center Phase III. The applicant proposes two development options. Option 10 has 89 units and 154 residential parking stalls. Option 10A has 87 units and 146 residential parking stalls. We have the following preliminary comments:

1. The Dewing Ave. approach from Mt. Diablo Blvd., its intersection with the east-west drive aisle, the entrance to the garage and the drop off area require further development. We have concerns regarding the

    a. Clarity of the vehicle rights-of-ways,

    b. Adequacy of the turning radii to clear parking spaces,

    c. Provision of ADA access and pedestrian crosswalks, including any special paving and striping to delineate such,

    d. Adequacy of garage entrance ramp width, and

    e. Adequacy of the width of the drive aisle adjacent to the proposed drop-off area.

2. It is difficult to evaluate the submittal because basic dimensions are not provided for parking aisle, ramp widths, typical space sizes and walkway widths. The plans should show existing conditions and controls for traffic circulation, including signs, stripes, and special pavement delineations, and how they are proposed to be changed by this project.

3. A variety of parking garage issues need further development:

a. Provide calculation and tabulation to show compliance with codes and requirements for the various types of parking, including handicapped parking spaces. Reconcile the quantities in the table provided separately with the actual number of parking spaces shown.

b. The door from the elevators opens directly into the drive aisle on the P2 Level. This creates a conflict with vehicles backing up from the nearby parking spaces and the travel lane. Exiting pedestrians need a landing space outside of the vehicle space to view traffic conditions and thereby avoid conflict.

c. Explain how the trash room is accessed and serviced.

d. The pedestrian path of travel for entering and exiting the commercial parking garage is not obvious. Provide way-finding signage and/or provide a pedestrian route along the ramp as this appears to be the most obvious route for pedestrians.

e. We noted a number of unused areas in the parking garage. Consider designating unused "left-over" space for moped, motorcycle and bike parking and storage.

f. Extend the access walkway in front of the residential handicapped spaces eastward to serve the van driver since they could be handicapped as well.

4. Bike Parking issues:

a. Long-term bike parking for residents should be provided in the secure residential parking area.

b. Short-term bike parking for the project's guests should be provided near and within clear eye-sight visibility of the building's main entrance.

5. The BART pathway issues:

a. The path is not dimensioned. It appears to be only 8 ft. wide which does not meet the standards for a two-way, bikeway path with pedestrians.

b. The north end of the pathway is shown on the Open Space and Circulation Plan as connecting to the BART parking lot, but not on the Site Plans. The pathway should be extended to link to the existing stairs and the end of cul-de-sac serving the BART Station parking lot.

c. The ability for residents of the project to enter and exit the project on the north-east side (possibly via the proposed plaza and/or stairways) should

be required to provide a convenient, shorter walking route for pedestrians to and from the BART path, BART station, and the future EBMUD Aqueduct pathway.

d. The southern stairway near the Community Gathering Space should be redesigned to connect to but not encroach on the BART pathway.

6. The Open Space and Circulation Plan depicts a pedestrian access route between the two retail buildings, crossing the east-west parking area and continuing north to the proposed development. This route conflicts with the existing parking layout. The design needs to resolve this conflict.

c:\users\lgreenblat\documents\leah's work files\development review\town ctr ph3 prelim review.doc

City of Lafayette
Public Meeting / Special Meetings
Lafayette City Council
Redevelopment Agency
Planning Commission
Design Review Commission

MINUTES

Lafayette Community Center – Sequoia Room **May 26, 2009**
500 St. Mary's Road, Lafayette, California **5:00 p.m.**

1. CALL TO ORDER

Mayor Tatzin called the meeting to order at 5:00 p.m.

2. ROLL CALL

Present: Council Members: Mayor Tatzin, and Councilmembers Anderson, Anduri and Federighi

Planning Commissioners: Will Lovitt, Chair, Thomas Chastain, Vice Chair, Jeanne Ateljevich, Karen Maggio, and Mark Mitchell

Design Review Commissioners: Tom Lee, Chair, Bob Cleaver, Ken Hertel, Bill Marquand

Absent: Vice Mayor Andersson (recused)

Staff: Steven Falk, City Manager; Ann Merideth, Community Development Director; Niroop Srivatsa, Planning & Building Services Manager; Melanie Donnelley, Acting City Attorney; Joanne Robbins, City Clerk

3. ADOPTION OF AGENDA

ACTION: It was M/S/C (Federighi/Anderson) to adopt the agenda. Vote: 4-0-1 (Ayes: Tatzin, Anduri, Federighi, Anderson; Noes: None; Absent: Andersson).

4. PUBLIC COMMENTS - None

5. OLD BUSINESS

Niroop Srivatsa, Planning and Building Services Manager
Town Center Phase III: Preliminary consideration of an 89-unit residential condominium project submitted by Lafayette Residential Partners and KB Home, Inc. on a 1.47 acre vacant parcel located behind 3590-3608 Mt. Diablo Blvd. APN 243-040-035
Recommendation: Discuss and direct.

Mayor Tatzin announced Vice Mayor Andersson recusal in participating on the item.

Ms. Srivatsa gave the staff report, stating based upon comments made at a previous meeting, the applicant will decide to proceed with filing a formal application and whether or not to make changes to the application as submitted. The two documents that govern the project are the development agreement first approved in 1998 for 4.84 acre parcel. This was subsequently amended; the latest done in 2008. The other document is the settlement agreement last amended in 2008 as well. Both documents set the parameters for review of the project, they outline what the project should look like, how many units it should contain, it clearly stipulates a process for review first at this joint meeting and then if the applicant proceeds with an application, review by the DRC, Planning Commission and Council within specified deadlines.

Ms. Srivatsa said staff asked for comments on the proposal that will be presented and are stated in the packet. She asked for feedback and review of the project in total and in specificity, and asked the group to be open and frank in their comments about the project such that the applicant can determine how best to proceed. Staff supports the development of a multi-family project at the proposed location. It is right next to the BART station and is a prime location for housing. However, staff has compared the 2009 plans with the 2005 Heller Manus plans, which were contained in the settlement agreement. As submitted, staff does not find that the 2009 plans are consistent with the 2005 plans and has listed the reasons in the staff packet. Staff recommends that the applicant revise the plans to be consistent with the 2005 plans and cannot recommend approval at this time.

She said Melanie Donnolley, Acting City Attorney, was present to discuss the purpose or process of the meeting and staff will be available to answer questions thereafter.

Ms. Donnolley said that while Ms. Srivatsa had already addressed the settlement agreement and the development agreement, the settlement agreement requires a joint meeting staff is holding tonight with the Council, DRC and Planning Commission. Based upon feedback received tonight, LRP will be deciding whether to file an application. If filed, it will be reviewed pursuant to the deadlines in the agreement. If preliminary approval is indicated tonight, staff will produce submittal requirements for the applicant which will be based upon legal requirements and comments that are brought forward tonight. She asked the group to focus on the big picture; look at the design, massing and height of the project and provide feedback. The applicants can submit revised plans and staff can work with the applicant to identify ways in which the specific plan needs to be amended. The BART Block Specific Plan amendment is something the agreement anticipates requiring as to height. If there are other aspects of the plan that are also inconsistent with the Specific Plan that would require amendments, those could be brought up, as well.

Ms. Srivatsa reiterated that this is an important meeting because the applicant will decide whether or not to proceed, but the settlement agreement also states that if the applicant files an application, the submittal requirements will be based upon what is normally required for an application and also limited to comments raised by Commissioners and Councilmembers at this meeting.

Mayor Tatzin suggested that because process is particularly important in this meeting as well as content, two rounds of questions are held by staff first to focus on process and then another round is held where the group can discuss content.

Councilmember Anduri questioned why the applicant had requested this meeting. Ms. Srivatsa said there are two purposes in the settlement agreement; 1) consistency with the 2009 Heller Manus Plan; and 2) it must be a project that is economically viable to LRP. The applicant will make an argument that changes staff is asking for will result in a project that is not economically feasible, and clearly, the applicant disagrees with staff on its findings of inconsistency.

Councilmember Federighi asked that if envisioned within the process, could this group say that we would want the project to return to the group again; i.e., that there would be certain requirements that the Commission and Council would want to see if there was consensus, rather than it be a formal application? Ms. Donnolley said the process does not call for this but it certainly could return if that was something everyone agreed to. She said the process calls for a submittal if preliminary approval is indicated.

Councilmember Federighi acknowledged whether the process calls for a submittal if preliminary approval is indicated, but by the same token, it calls for everyone to be candid about what they like and do not like and what modifications, if any, they would like to see. This being the case, it assumes that those modifications would need to be part of what is actually in the final submission. Ms. Donnolley agreed, to the extent that those modifications are required to make the project consistent with the 2005 plan and the BART Block Specific Plan.

Ms. Srivatsa said from a staff's standpoint, it would be in the best interest of the applicant to return to this group to get an idea of whether or not a formal expense of application would be met with approval. However, the language in the settlement agreement speaks only of one preliminary meeting. If the applicant were to agree to return, this could be accommodated.

Mayor Tatzin questioned what would happen if the group continued this meeting and it could be argued that it is the same meeting, and Ms. Donnolley believed this was a valid point, as well.

Councilmember Federighi said consistency with the BART Block Specific Plan was referred to. Very obviously, she did not believe the plan was consistent in terms of height, nor does the settlement or development agreement anticipate that it would be. To her, this point would be moot. Ms. Donnolley said the settlement/development agreement emphasize that the developer will have to seek an amendment to the BART Block Specific Plan.

Commissioner Lovitt asked for a definition of the economic feasibility referred to in the development agreement and he questioned whether or not future deliberations on the project would be limited only to issue raised in this meeting.

Ms. Srivatsa read the language; "After the preliminary meeting, submittal requirements shall include all CEQA compliance requirements, provided however, prior EIR studies and addenda shall be considered. Otherwise, submittal requirements shall be limited to matters legally required for project consideration and directly responsive to comments

from Councilmembers and Commissioners." She said there are items that are on a checklist in a submittal application. If there are issues that are raised specific to the project, the agreement states they should be raised now and the applicant will be required to submit information to respond to those comments.

Commissioner Lovitt said, therefore, they will not be able to raise issues in subsequent meetings during the approval process. Ms. Donnolley said she did not know that the approval process anticipates other meetings; all comments should be raised tonight. Commissioner Lovitt confirmed that the process would be such that the project would go through DRC and Planning Commission at this meeting. Ms. Donnolley said to the extent that the bodies point out areas it likes and does not like, said staff will work with the developer in terms of what amendments are required to the Specific Plan, and the DRC and Planning Commission will be reviewing those.

Mayor Tatzin said discussion would be held on preliminary approval this evening, or lack thereof. He questioned what preliminary approval meant. Ms. Srivatsa said it would mean that if the group finds that the 2009 Heller Manus plans are consistent with the 2005 Heller Manus plans and that an 89-unit condominium project in its shape and size is acceptable. If the group cannot outright support the project but finds the use to be appropriate if certain modifications are made, the group can indicate what those changes should be. Lastly, if there is nothing in the project the group likes, this is the time to state it, as well. What the settlement agreement calls this is the "project preliminary comments", and it does not necessarily have to be approval.

Mayor Tatzin believed that project preliminary comments and preliminary approval were vastly different. He questioned if an acceptable course of action under the settlement agreement would be a scenario where the group could provide preliminary comments today and an application comes in and ultimately the Planning Commission decides not to approve it. Ms. Donnolley said there is no obligation to approve anything.

Councilmember Anduri suggested striking the word "approval" from any reference. He said most important is that if any Commissioner or Councilmember has a concern or under no circumstances can approve it; this is the time to express it. He understands the settlement agreement to say it is not fair to go past this meeting with these plans and then at the Council meeting, say the density is too high.

Commissioner Chastain said what would occur if there is a condition imposed to indicate the group likes the project if "x-y-z" is done, and when the project comes back and another question is prompted, he asked if the group was allowed to comment on it, or did the issue subject itself to a first scrutiny. Ms. Srivatsa believed if the Commission received an application with new information, questions can be raised and clarification can be sought on that issue. She believes what the intent is, is that supposing the group states the shape of the 4 and 5 story building is appropriate with some tweaks and then in the application review process, Commissioners/Councilmembers says no, we really like a donut-shaped building or townhouses, the comments made at this meeting should be adhered and "stuck" to. If new information is provided as part of the submittal requirements, those issues could be discussed.

Commissioner Marquand noted that there is a significant change in the number of units and questioned if there were anything that changed in the environment of the project that